

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. C 10-00547 CRB

Plaintiff,

**ORDER RE DEFENDANT'S MOTION
TO STRIKE GOVERNMENT'S
SENTENCING MEMORANDUM**

v.

SAMUEL COHEN,

Defendant.

The Court has received the parties' submissions on sentencing, including Defendant's Sentencing Memorandum (dkt. 372), submitted April 20, 2012, the Government's Memorandum Regarding Sentencing Guidelines Calculations (dkt. 373), submitted April 20, 2012, the Government's Sentencing Memorandum (dkt. 375), submitted April 25, 2012, and Defendant's Motion to Strike Government's Sentencing Memorandum and Partial Response to Untimely Sentencing Memorandum and Motion to Continue Sentencing (dkt. 376), submitted April 27, 2012. Having carefully considered such filings, as well as the arguments the parties made at the April 24, 2012 hearing, the Court holds as follows.

Defendant's Motion to Strike in its entirety the Government's Sentencing Memorandum as untimely is DENIED. The Government was entitled to file a second sentencing memorandum, and indicated in filing its April 20, 2012 memorandum that it would do so. In addition, the Government was entitled to respond to both (1) the issues

1 Defendant raised in his April 20, 2012 submission, and (2) the Court's April 24, 2012 rulings
2 on the appropriate sentencing range, and the Court permitted it to do so. See Minutes (dkt.
3 374). Similarly, Defendant was entitled to file a second sentencing memorandum, to respond
4 to anything it wished, and the Court permitted him to do so. Id.


5 Nonetheless, the Court agrees with Defendant that the new allegations raised in the
6 Government's second memorandum, listed in bullet-point form on pages 2 and 3 of
7 Defendant's Motion, should not be a basis for sentencing, to the extent that they introduce
8 new information not previously before the Court. Accordingly, Defendant's request that the
9 Court move the sentencing hearing in order to allow Defendant to "investigate and
10 meaningfully respond" to those allegations is DENIED AS MOOT.

11 As to forfeiture, the Court DIRECTS the Government to file a proposed order
12 consistent with Federal Rule of Criminal Procedure 32.2(b)(2)(C) by April 30, 2012 at 8:00
13 AM.

14 Finally, the Court will not determine restitution at the sentencing hearing on April 30,
15 2012. Pursuant to 18 U.S.C. § 3664(d)(5), the Court SETS a hearing on restitution for
16 Friday, May 4, 2012 at 2:00 PM.

17 **IT IS SO ORDERED.**

18 Dated: April 27, 2012


CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE